GK LAND SDN BHD v. MEGA 3 HOUSING SDN BHD & ANOR AND ANOTHER APPEAL

COURT OF APPEAL, PUTRAJAYA
ALIZATUL KHAIR OSMAN JCA
LIM YEE LAN JCA
NALLINI PATHMANATHAN JCA
[CIVIL APPEALS NO: C-01(NCVC)(W)-184-06-2014 &
C-01(NCVC)(W)-185-06-2014]
21 FEBRUARY 2017

CONTRACT: *Agreement – Joint venture agreement – Construction of clause in agreement – Approved layout plan delineated areas as public utility land – Whether public utility land should be surrendered to State as State land – Whether acceptance of quit rent by State Government an acknowledgement of registered proprietor's ownership of land*

LOCAL GOVERNMENT: *Local authority – Duties of local authority – Approval for development project – Sub-division of master land – Inclusion of lands to be used for public purpose – Whether local authority complied with direction of Jawatankuasa Pembangunan Tanah dan Kewangan in specifying area for public utility*

STATUTORY INTERPRETATION: *Construction of statute – Interpretation – Town and Country Planning Act 1976, s. 2 – Functions of State Planning Committee – Approval for development project – Inclusion of 'kawasan (gerai)' as example of land to be used for public purpose – Whether within meaning of 'open space ' in s. 2*

There were two appeals herein: (i) Appeal No 184 relating to a suit which was originally filed in the Kuala Lumpur High Court by GK Land Sdn Bhd ('GK Land') against Mega 3 Housing Sdn Bhd ('Mega 3 Housing') ('the Kuala Lumpur suit'); and (ii) Appeal No 185 relating to a suit filed in the Temerloh High Court by Mega 3 Housing against, *inter alia*, GK Land ('Temerloh suit'). The Kuala Lumpur suit was subsequently transferred, on the application of Mega 3 Housing, to the Temerloh High Court to be heard together with the Temerloh suit. The appeals herein emanated from a single judgment of the Temerloh High Court. Pembangunan Triang Sdn Bhd ('PTSB'), the registered proprietor of two pieces of agricultural land in Bera ('master land'), obtained the approval of the Pahang State Executive Council ('State Exco') to develop the master land into a mixed residential/commercial development ('the development'). Subsequently, upon PTSB's appeal, the State Exco increased the number of residential/shophouse properties to be constructed within the development. The layout plan ('approved layout plan') for the development was subsequently approved by the Pejabat Daerah dan Tanah Bera. The Pejabat Daerah dan Tanah Bera proceeded to prepare a total of 692 sub-divisional titles, namely, 682 for the

residential and shop-house lots and ten for the public utility lands within the development despite the State Exco's direction that no sub-divisional title would be issued for any public utility land within the development. PTSB thereafter paid a sum of RM61,400 as processing fee to the Pejabat Daerah dan Tanah Bera for the preparation and issuance of documents of titles for the 682 commercial/residential properties and obtained an official receipt. The land was subsequently sold by PTSB to GK Land *vide* a sale and purchase agreement ('SPA'). Mega 3 Housing was appointed as the developer to complete the development ('JVA') which had been left uncompleted by the earlier developer. Pursuant to the requirement of the Jabatan Bekalan Air Daerah Bera and with the approval of the Pejabat Daerah dan Tanah Bera, Mega 3 Housing proceeded to construct the reserved water tank on a portion of the tapak gerai lot. After the construction of the water tank, Mega 3 Housing proceeded to apply to the Pejabat Daerah dan Tanah Bera to amend the approved layout plan to reflect the position of the said reserved water tank on the said plan and obtained the approval. The construction of the water tank on the tapak gerai was the subject of the dispute between GK Land and Mega 3 Housing and subsequently the subject-matter of the two suits before the Kuala Lumpur High Court and the Temerloh High Court. GK Land claimed that by virtue of recital (5) read with the definition of 'the said land' in cl. 2(d) of the JVA, GK Land was the beneficial owner of the tapak gerai and the said land was excluded from the development and would be separately developed by GK Land on its own. At the conclusion of the trial, the Judicial Commissioner ('JC') allowed GK Land's claim against Mega 3 Housing for breach of the JVA and granted nominal damages to GK Land to be assessed by the court. The JC also allowed the State Government's prayers for a declaration that the tapak gerai was State land and an order for PTSB/GK Land to surrender the issue document of title of the said land for cancellation. The JC, however, dismissed the Temerloh suit holding that since Mega 3 Housing had no proprietary or beneficial interest in the tapak gerai lot and that it had no *locus standi* to come to the court to seek the remedy in the form of a declaration on the status of the tapak gerai in the suit. The rightful party to seek such a declaration was the State Government of Pahang, and it had already done so in the Kuala Lumpur suit. The court had no power to grant two declarations of the same nature to two different parties in two different suits. There were three issues for determination in the appeal, *ie*, whether the JC was correct in holding that: (i) pursuant to the approvals of the State Exco for the development of the master land, the tapak gerai was a public utility land which had to be surrendered to the State as State land; (ii) GK Land's claim in the Kuala Lumpur suit was a contractual claim based on the JVA and the question whether GK Land had proprietary right over the tapak gerai was irrelevant in determining Mega 3 Housing's liability under the JVA; and (iii) Mega 3 Housing did not have the *locus standi* to seek the declaration regarding the status of the tapak gerai in the Temerloh suit.

Held (dismissing appeal and allowing cross appeal in Appeal No 184; allowing Appeal No 185)
Per Lim Yee Lan JCA delivering the judgment of the court:

(1) Having regard to the law relating to planning, approval which must be obtained by a registered proprietor before undertaking any commercial development of his land, it is common knowledge that the law relating to any planning approval is the Town and Country Planning Act 1976 ('the Act'). The process or mechanism by which the State Authority came to designate any land within any proposed development as a public utility land is to be found in the Act rather than under s. 124A(3) read with s. 124(5) of the National Land Code ('NLC'). (para 51)

(2) The approval of the development project by the State Jawatankuasa Pembangunan Tanah dan Kewangan was given pursuant to s. 4(4) of the Act in the exercise of its statutory function. In light of the functions of the State Planning Committee as provided in s. 4(4) and the meaning given to the words 'open space' in s. 2 of the Act, which includes 'land, whether enclosed or not ... reserved as a public place', the inclusion of 'kawasan perniagaan kecil (gerai)' as an example of land to be used for a public purpose by the Jawatankuasa Pembangunan Tanah dan Kewangan is within the meaning of 'open space ' in s. 2. (paras 64-66)

(3) Pursuant to s. 4(5) of the Act, the Pejabat Daerah dan Tanah, as the local planning authority responsible for the approval of the development, would have to comply with the direction of the Jawatankuasa Pembangunan Tanah dan Kewangan. This would account for the fact that the Pejabat Daerah dan Tanah Bera had, pursuant to the direction of the Jawatankuasa Pembangunan Tanah dan Kewangan, specified ten areas, one of which was the tapak gerai, within the development as lands to be used for a public amenity/ utility or for a public purpose on the final approved layout plan. (paras 67 & 68)

(4) The fact that the process or mechanism of specifying any area within any proposed development as a public utility land is to be carried out under the various provisions of the Act is further supported by s. 136 read with s. 124A of the NLC. The term 'planning authority' in s. 136(1)(c)(i) and (ii) refers to the planning authority as defined in the Act. In other words, sub-division of the master land under the special procedure provided in s. 124A of the NLC would only be considered after all the necessary planning approvals under the Act have been obtained. Under the Act, planning approvals would include the submission of layout plan which by virtue of s. 21B must mark out

areas for open spaces. The proposed layout plan submitted by PTSB through its consulting engineers had already incorporated the ten specified public utility lands and the said layout plan was finally approved by the Pejabat Daerah dan Tanah Bera. (paras 69, 70 & 72)

(5) Submissions by GK Land, about the State Exco having not imposed any specific condition in its two approvals under s. 124A read with s. 124(5) and that the initial approvals of the Jawatankuasa Pembangunan and Kewangan relating to public utility lands which include the tapak gerai was superseded by the two approvals, were misconceived and did not hold water. (para 74)

(6) The tapak gerai lot was held in the name of PTSB as the registered proprietor and the only condition endorsed on the title was that 'Tanah ini hendaklah digunakan untuk Bangunan Perniagaan (gerai sahaja)'. This showed that the State Government had all along intended that PTSB shall own the tapak gerai as the indefeasible registered proprietor subject only to the express condition endorsed on the title on its use. Further, PTSB had paid the quit rent for the tapak gerai and receipts of such payment had been issued by the said land office. The acceptance of quit rent was an acknowledgement by the State Government of PTSB's ownership of the tapak gerai. Hence, the State Government was estopped from saying that the acceptance of quit rent was a mistake on the part of the land office. (paras 77-79)

(7) There was no merit in GK Land's contention that PTSB had an indefeasible proprietorship over the tapak gerai by virtue of the title which was issued in its name without any condition for its surrender. Pursuant to the State Exco's two approvals made pursuant to s. 124A, only 682 units of residential and shop-houses were approved for the development by PTSB. PTSB was fully aware that upon sub-division of the master land, it was only entitled to the 682 sub-divisional lots and all other public utility lands designated on the approved layout plan had to be surrendered to the State Government as State land to be used for such purposes. The issuance of titles for the ten public utility lands was a mistake made by the Jabatan Daerah dan Tanah Bera contrary to the direction of the State Exco in its approvals to the development. As PTSB was fully aware of the mistake made by the land office but chose to keep quiet about it, PTSB should not be allowed to profit from it. (paras 84-86)

(8) Judicial notice could be taken that acceptance of quit rent at the payment counter at the land office is automatic and the counter clerk who accepts the payment is not required to inquire into the validity or otherwise of the title before accepting such payment. Such an

A administrative act of a counter clerk in collecting revenue for the State where the title as shown on the computerised system is for all intents and purposes still in existence and valid on the face of it could not bind the State. (para 89)

B **(9)** The final approved layout plan in respect of the development had designated ten areas for use as public amenities or as public places, which included the tapak gerai. PTSB had accepted all the terms of the State Exco's approvals on the development, including the approved layout plan. Hence, the procedure adopted by the State Government in seeking the relief of declaration and order for PTSB/GK Land to C surrender such document was a valid action; and the High Court has the jurisdiction to grant an order to compel obedience to a decision of the State Government made in accordance with the lawful exercise of its powers under the relevant laws. (paras 91 & 94)

D **(10)** On the date of the SPA for the purchase of the master land by GK Land from PTSB, all the approvals for the development had already been finalised. This meant that GK Land bought the master land subject to the terms of the approvals and were bound by them. Thus, preamble (5) of the JVA which declared GK Land as the beneficial owner of the tapak gerai and cl. 2(d) which allegedly conferred E exclusive right to GK Land to commercially develop the tapak gerai were ineffectual to confer such a right on GK Land. In the circumstances, it could not claim to have suffered any loss/damage by reason of the amendment to the approved layout plan and/or the construction of the reserved water tank on the said land. Further, in F view of cl. 8 of the JVA, Mega 3 Housing could not be said to have breached the JVA as the construction of the reserved water tank was clearly at the direction of Jabatan Bekalan Air which Mega 3 Housing, as the developer, was legally and contractually obliged to comply. (paras 104-107)

G **(11)** In the Temerloh suit, Mega 3 Housing was fighting its own cause in light of the claim by GK Land against it in the Kuala Lumpur suit where the actual legal status of the tapak gerai had a direct bearing on its liability to GK Land. It thus had a real and genuine interest in having the status of the tapak gerai determined by the court and H consequently a cause of action against the defendants in the Temerloh suit. Therefore, in filing the Temerloh suit, Mega 3 Housing had a legitimate interest in the relief applied for. The JC erred in approaching the matter as a *locus* or jurisdictional issue. Further, since the Kuala Lumpur suit and the Temerloh suit were heard together, it would have sufficed for the High Court to have made one declaratory I

order in regard to the status of the tapak gerai and such a declaratory order would have served the purpose of Mega 3 Housing in filing the Temerloh suit and the question of duplicity would not have arisen. (paras 113, 116, 117 & 119)

***Bahasa Malaysia** Headnotes*

Terdapat dua rayuan di sini: (i) Rayuan No 184 berkaitan dengan guaman yang pada asalnya difailkan di Mahkamah Tinggi Kuala Lumpur oleh GK Land Sdn Bhd ('GK Land') terhadap Mega 3 Housing Sdn Bhd ('Mega 3 Housing') ('guaman Kuala Lumpur'); and (ii) Rayuan No 185 berkaitan dengan guaman yang difailkan di Mahkamah Tinggi Temerloh oleh Mega 3 Housing terhadap, antara lain, GK Land ('guaman Temerloh'). Guaman Kuala Lumpur kemudiannya dipindahkan, atas permohonan Mega 3 Housing, ke Mahkamah Tinggi Temerloh untuk dibicarakan bersama-sama dengan guaman Temerloh. Rayuan-rayuan di sini berasal daripada satu penghakiman Mahkamah Tinggi Temerloh. Pembangunan Triang Sdn Bhd ('PTSB'), pemilik berdaftar dua bidang tanah pertanian di Bera ('tanah induk') memperoleh kelulusan Majlis Mesyuarat Negeri Pahang ('Exco Negeri') untuk membangunkan tanah induk pada pembangunan perumahan/komersial bercampur ('pembangunan'). Kemudian, atas rayuan PTSB, Exco Negeri menambah jumlah hartanah perumahan/rumah kedai yang akan dibina dalam pembangunan tersebut. Pelan susun atur ('pelan susun atur yang diluluskan') bagi pembangunan tersebut kemudiannya diluluskan oleh Pejabat Daerah dan Tanah Bera. Pejabat Daerah Dan Tanah Bera meneruskan untuk menyediakan sejumlah 692 hak milik sub-bahagian, iaitu, 682 bagi lot-lot perumahan dan rumah kedai dan sepuluh bagi tanah kemudahan awam dalam kawasan pembangunan walaupun Exco Negeri mengarahkan tiada hak milik sub-bahagian boleh dikeluarkan bagi mana-mana tanah kemudahan awam dalam kawasan pembangunan. PTSB kemudian membayar sejumlah RM61,400 sebagai fi pemprosesan kepada Pejabat Daerah dan Tanah Bera bagi penyediaan dan pengeluaran dokumen-dokumen hak milik bagi 682 hartanah komersial/perumahan dan mendapatkan resit rasmi. Tanah tersebut kemudian dijual oleh PTSB kepada GK Land melalui perjanjian jual beli ('PJB'). Mega 3 Housing dilantik sebagai pemaju untuk menyiapkan pembangunan ('JVA') yang diabaikan oleh pemaju terdahulu. Menurut permintaan Jabatan Bekalan Air Daerah Bera dan dengan kelulusan Pejabat Daerah dan Tanah Bera, Mega 3 Housing meneruskan untuk membina tangki air rizab atas bahagian lot tapak gerai. Selepas pembinaan tangki air tersebut, Mega 3 Housing meneruskan untuk memohon pada Pejabat Daerah dan Tanah Bera untuk meminda pelan susun atur yang diluluskan untuk menunjukkan kedudukan tangki air rizab atas pelan tersebut dan memperoleh kelulusan. Pembinaan tangki air atas tapak gerai adalah perkara pertikaian antara GK Land dan Mega 3 Housing dan

kemudiannya perkara dua guaman di hadapan Mahkamah Tinggi Kuala Lumpur dan Mahkamah Tinggi Temerloh. GK Land mendakwa bahawa melalui mukadimah (5) dibaca bersama-sama dengan definisi 'The said Land' dalam kl. 2(d) JVA, GK Land adalah pemilik benefisial tapak gerai tersebut dan tanah tersebut dikecualikan daripada pembangunan dan akan dibangunkan secara berasingan oleh GK Land sendiri. Di akhir perbicaraan, Pesuruhjaya Kehakiman ('PK') membenarkan tuntutan GK Land terhadap Mega 3 Housing bagi pelanggaran JVA dan membenarkan ganti rugi nominal kepada GK Land untuk ditaksir oleh mahkamah. Pesuruhjaya Kehakiman juga membenarkan permohonan-permohonan Kerajaan Negeri bagi deklarasi bahawa tapak gerai tersebut adalah tanah Negeri dan satu perintah bagi PTSB/ GK Land menyerahkan dokumen hak milik tanah untuk dibatalkan. Walau bagaimanapun, PK menolak guaman Temerloh memutuskan bahawa oleh sebab Mega 3 Housing tiada kepentingan hak milik atau benefisial dalam lot tapak gerai dan bahawa ia tiada *locus standi* untuk ke mahkamah untuk memohon remedi dalam bentuk deklarasi atas status tapak gerai dalam guaman tersebut. Pihak yang berhak memohon deklarasi sedemikian adalah Kerajaan Negeri Pahang yang telah pun berbuat demikian dalam guaman Kuala Lumpur. Mahkamah tiada kuasa untuk memberikan dua deklarasi yang bersifat sama kepada dua pihak berbeza dalam dua guaman berasingan. Terdapat tiga isu untuk dipertimbangkan dalam rayuan ini, iaitu, sama ada PK betul dalam memutuskan bahawa: (i) menurut kelulusan-kelulusan Exco Negeri bagi pembangunan tanah induk, tapak gerai tersebut adalah tanah kemudahan awam yang mesti diserahkan kepada Negeri sebagai tanah Negeri; (ii) tuntutan GK Land dalam guaman Kuala Lumpur adalah tuntutan bersifat kontrak berdasarkan JVA dan persoalan sama ada GK Land mempunyai hak proprietari atas tapak gerai tidak relevan dalam menentukan liabiliti Mega 3 Housing di bawah JVA; dan (iii) Mega 3 Housing tiada *locus standi* untuk memohon deklarasi berkaitan status tapak gerai dalam guaman Temerloh.

Diputuskan (menolak rayuan dan membenarkan rayuan balas dalam Rayuan No 184; membenarkan Rayuan No 185)
Oleh Lim Yee Lan HMR menyampaikan penghakiman mahkamah:

(1) Berikutan undang-undang berkaitan pelan, kelulusan yang mesti diperolehi oleh pemilik berdaftar sebelum memulakan apa-apa pembangunan komersial atas tanahnya, adalah pengetahuan umum bahawa undang-undang berkaitan apa-apa kelulusan perancangan adalah Akta Perancangan Bandar dan Desa 1976 ('Akta'). Proses atau mekanisme yang ditangani Pihak Berkuasa Negeri untuk merancang apa-apa tanah dalam sebarang pembangunan sebagai tanah kemudahan awam didapati dalam Akta dan bukan di bawah s. 124A(3) dibaca bersama-sama dengan s. 124(5) Kanun Tanah Negara ('KTN').

(2) Kelulusan bagi pembangunan projek oleh Jawatankuasa Pembangunan Tanah dan Kewangan Negeri diberikan menurut s. 4(4) Akta dalam melaksanakan fungsi statutorinya. Berikutan fungsi Jawatankuasa Perancangan Negeri seperti yang diperuntukkan dalam s. 4(4) dan maksud yang diberikan pada perkataan 'open space' dalam s. 2 Akta, yang termasuk 'land, whether enclosed or not ... reserved as a public place', kemasukan 'kawasan perniagaan kecil (gerai)' sebagai contoh tanah yang akan digunakan untuk tujuan umum oleh Jawatankuasa Pembangunan Tanah dan Kewangan terangkum dalam maksud 'open space' dalam s. 2.

(3) Menurut s. 4(5) Akta, Pejabat Daerah dan Tanah, sebagai pihak berkuasa perancangan tempatan bertanggungjawab bagi kelulusan pembangunan, perlu mematuhi arahan Jawatankuasa Pembangunan Tanah dan Kewangan. Ini adalah fakta mengapa Pejabat Daerah dan Tanah Bera telah, menurut arahan Jawatankuasa Pembangunan Tanah dan Kewangan, mengkhususkan sepuluh kawasan, salah satu daripadanya adalah tapak gerai, dalam kawasan pembangunan sebagai tanah-tanah yang akan digunakan sebagai kemudahan awam atau sebagai tujuan umum pada pelan susun atur terakhir yang diluluskan.

(4) Fakta bahawa proses atau mekanisme mengkhususkan apa-apa kawasan dalam mana-mana kawasan pembangunan yang dicadangkan sebagai tanah kemudahan awam perlu dijalankan di bawah pelbagai peruntukan Akta disokong lanjut oleh s. 136 dibaca bersama-sama dengan s. 124A KTN. Terma 'pihak berkuasa perancangan' dalam s. 136(1)(c)(i) dan (ii) merujuk pada pihak berkuasa perancangan seperti yang didefinisi dalam Akta. Dalam perkataan lain, sub-bahagian tanah induk bawah prosedur khas yang diperuntukkan dalam s. 124A KTN hanya akan dipertimbangkan selepas kesemua kelulusan perancangan yang diperlukan di bawah Akta telah diperoleh. Di bawah Akta, kelulusan perancangan termasuk pengemukaan pelan susun atur yang menurut s. 21B mesti mengenal pasti kawasan terbuka. Pelan susun atur yang dicadangkan dikemukakan oleh PTSB melalui jurutera perundingnya telah pun memasukkan sepuluh tanah kemudahan awam yang dikhususkan dan pelan susun atur tersebut akhirnya diluluskan oleh Pejabat Daerah dan Tanah Bera.

(5) Kesemua hujahan GK Land, mengenai Exco Negeri tidak mengenakan apa-apa syarat khusus dalam dua kelulusannya bawah s. 124A dibaca bersama-sama dengan s. 124(5) dan bahawa kelulusan awal oleh Jawatankuasa Pembangunan dan Kewangan berkaitan dengan tanah-tanah kemudahan awam yang termasuk tapak gerai digantikan oleh kedua-dua kelulusan tersebut, adalah salah tanggap dan tidak boleh dikekalkan.

(6) Lot tapak gerai dipegang dalam nama PTSB sebagai pemilik berdaftar dan satu-satunya syarat yang diendorskan atas hak milik adalah 'Tanah ini hendaklah digunakan untuk Bangunan Perniagaan (gerai sahaja)'. Ini menunjukkan bahawa Kerajaan Negeri hanya meniatkan bahawa PTSB perlu memiliki tapak gerai kerana pemilik berdaftar tak boleh sangkal tertakluk hanya pada syarat nyata yang diendorskan atas hak milik bagi kegunaannya. Selanjutnya, PTSB telah membayar cukai tanah bagi tapak gerai dan resit-resit bagi pembayaran tersebut telah dikeluarkan oleh pejabat tanah. Penerimaan cukai tanah adalah pengakuan oleh Kerajaan Negeri terhadap pemilikan PTSB bagi tapak gerai tersebut. Oleh itu, Kerajaan Negeri diestop daripada menyatakan bahawa penerimaan cukai tanah adalah kesilapan pada pihak pejabat tanah.

(7) Tiada merit dalam hujahan GK Land bahawa PTSB mempunyai hak milik tak boleh sangkal terhadap tapak gerai melalui hak milik yang dikeluarkan atas namanya tanpa apa-apa syarat bagi penyerahannya. Menurut dua kelulusan yang dibuat Exco Negeri berikutan s. 124A, hanya 682 unit perumahan dan rumah kedai diluluskan bagi pembangunan oleh PTSB. PTSB sedar sepenuhnya bahawa selepas sub-pembahagian tanah induk, ia hanya berhak pada 682 lot sub-dibahagi dan kesemua tanah kemudahan awam yang dirancang atas pelan susun atur yang diluluskan perlu diserahkan kepada Kerajaan Negeri sebagai tanah Negeri untuk digunakan bagi tujuan tersebut. Pengeluaran hak milik bagi sepuluh tanah-tanah kemudahan awam adalah kesilapan yang dibuat oleh Jabatan Daerah dan Tanah Bera bertentangan dengan arahan Exco Negeri dalam kelulusannya bagi pembangunan. Oleh sebab PTSB menyedari sepenuhnya kesilapan yang dibuat oleh pejabat tanah tetapi memilih untuk berdiam diri, PTSB tidak boleh dibenarkan mendapat faedah daripadanya.

(8) Notis kehakiman boleh diambil bahawa penerimaan cukai tanah di kaunter bayaran di pejabat tanah adalah automatik dan kerani kaunter yang menerima bayaran tidak diperlukan menyoal sama ada hak milik tersebut sah atau tidak sebelum menerima bayaran tersebut. Tindakan pentadbiran kerani kaunter mengutip hasil bagi Negeri di mana hak milik seperti yang ditunjukkan oleh sistem berkomputer adalah bagi kesemua niat dan tujuan masih wujud dan sah secara zahirnya tidak boleh mengikat Negeri.

(9) Pelan susun atur terakhir yang diluluskan berkaitan dengan pembangunan tersebut menetapkan sepuluh kawasan bagi kegunaan kemudahan awam atau tempat awam, yang termasuk tapak gerai tersebut. PTSB telah menerima kesemua terma kelulusan Exco Negeri

bagi pembangunan tersebut, termasuk pelan susun atur yang diluluskan. Oleh itu, prosedur yang diguna pakai oleh Kerajaan Negeri dalam memohon relif deklarasi dan perintah bagi PTSB/GK Land menyerahkan dokumen tersebut adalah tindakan yang sah; dan Mahkamah Tinggi mempunyai bidang kuasa memberikan perintah mewajibkan pematuhan keputusan Kerajaan Negeri yang dibuat menurut pelaksanaan sah kuasa-kuasanya di bawah undang-undang yang relevan.

(10) Pada tarikh PJB bagi jual beli tanah induk oleh GK Land daripada PTSB, semua kelulusan bagi pembangunan telah pun dimuktamadkan. Ini bermaksud GK Land membeli tanah induk tertakluk pada terma-terma kelulusan dan terikat dengannya. Oleh itu, mukadimah (5) JVA yang mengisytiharkan GK Land sebagai pemilik benefisial tapak gerai dan kl. 2(d) yang didakwa memberikan hak eksklusif kepada GK Land untuk membangunkan secara komersial tapak gerai tersebut tidak berkesan untuk memberikan hak sedemikian kepada GK Land. Dalam keadaan tersebut, ia tidak boleh mendakwa telah mengalami kehilangan/kerugian atas alasan bahawa pindaan pada pelan susun atur yang diluluskan dan/atau pembinaan tangki air rizab atas tanah tersebut. Selanjutnya, berikutan kl. 8 JVA, Mega 3 Housing tidak boleh dikatakan melanggar JVA kerana pembinaan tangki air rizab tersebut jelas atas arahan Jabatan Bekalan Air yang mana Mega 3 Housing, sebagai pemaju, berkewajipan mematuhinya dari segi undang-undang dan kontrak.

(11) Dalam guaman Temerloh, Mega 3 Housing memperjuangkan kausanya sendiri berikutan tuntutan GK Land terhadapnya dalam guaman Kuala Lumpur di mana status undang-undang sebenar tapak gerai mempunyai kaitan langsung atas liabilitinya terhadap GK Land. Oleh itu, ia mempunyai kepentingan yang sebenar dan tulen dalam pemutusan status tapak gerai oleh mahkamah dan berikutan itu, satu kausa tindakan terhadap defendan-defendan dalam guaman Temerloh. Dengan itu, dalam memfailkan guaman Temerloh, Mega 3 Housing bukan penyibuk tetapi mempunyai kepentingan sah dalam relif yang dipohon. Pesuruhjaya Kehakiman terkhilaf dalam menangani perkara tersebut sebagai isu *locus* atau bidang kuasa. Selanjutnya, oleh sebab guaman Kuala Lumpur dan guaman Temerloh dibicarakan bersama, adalah mencukupi bagi Mahkamah Tinggi membuat satu perintah deklarasi berkaitan status tapak gerai dan perintah deklarasi sedemikian akan memenuhi tujuan Mega 3 Housing memfailkan guaman Temerloh dan persoalan penduaan tidak akan timbul.

Case(s) referred to:

Government of Malaysia v. Lim Kit Siang & Another Case [1988] 1 CLJ 219; [1988] 1 CLJ (Rep) 63 SC ***(refd)***

Hoe Lee Development Sdn Bhd v. Shell Malaysia Trading [1984] 1 LNS 115 HC ***(refd)***

Lee Chi Min & Anor v. Superintendent of Land and Survey Department, Kuching [1980] 1 LNS 196 FC ***(refd)***

Pengarah Tanah dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd [1978] 1 LNS 143 FC ***(refd)***

Legislation referred to:

Federal Constitution, art. 13(1)

National Land Code, ss. 124(1), (5)(c), 124A(3), 136(1)(c)(i), (ii), 200

Town and Country Planning Act 1976, ss. 2, 4(1), (4), (5), 6, 19, 21(1), 21A, 21B(1), 22

For the appellant - Rajvinder Singh & S Raven; M/s Dennis Nik & Wong

For the 1st respondent - Francis Tan & Gow Jia Jian; M/s Rosni, Francis Tan & Ho

For the 2nd respondent - Ahmad Hanir Hambaly; Pahang State Legal Advisor

[Appeal from High Court, Temerloh; Civil Suits No: 22NCVC-18-03-2013 & S-269-2010 (overruled in part).]

Reported by S Barathi

JUDGMENT

Lim Yee Lan JCA:

Introduction

[1] There were two appeals before us, namely, Appeal No. C-01(NCVC)(W)-184-06-2014 (Appeal No. 184) and Appeal No. C-01-185-06/201 (Appeal No. 185) emanating from a single judgment of the Temerloh High Court given on 29 April 2014 given in relation to two suits which were heard together by the High Court.

[2] Appeal No. 184 relates to Suit No. S-22-269-2010 which was originally filed in the Kuala Lumpur High Court by GK Land Sdn Bhd (GK Land) against Mega 3 Housing Sdn Bhd (Mega 3 Housing) ("the Kuala Lumpur suit").

[3] Appeal No. 185 relates to Suit No: 22-25-2010 which was filed in the Temerloh High Court by Mega 3 Housing against, *inter alia*, GK Land (Temerloh suit).

[4] The Kuala Lumpur suit was subsequently transferred, on the application of Mega 3 Housing, to the Temerloh High Court to be heard together with the Temerloh suit.

Background Facts

[5] The background facts giving rise to the two suits were as follows.

[6] Pembangunan Triang Sdn Bhd (PTSB) was the registered proprietor of two pieces of agricultural land held under CT 4982 Lot 3257 and CT 4983 Lot 3258 both in Mukim Triang, Daerah Bera, Pahang Darul Makmur ("the master land").

[7] In 1990, PTSB applied to the Pahang State Government for approval to develop the master land into a mixed residential/commercial development ("the development").

[8] The application was made pursuant to s. 124A, which provides a procedure to a registered proprietor who wishes to develop his land for a commercial purpose to make a simultaneous application to sub-divide his land and to vary the category or condition of land use, under s. 124(1)) of the National Land Code (NLC).

[9] The application was approved by the Pahang State Executive Council (State ExCo) at its Meeting held on 30 May 1990.

[10] Subsequently, upon PTSB's appeal, the State ExCo at its meeting on 13 April 1994 increased the number of residential/shophouse properties to be constructed within the development.

[11] The final approval of the State ExCo was as follows:

(a) Category of land use was changed from agriculture to building (residential/commercial);

(b) The development shall consist of 682 units of buildings comprising 48 units of shop houses and 634 units of medium and low cost houses;

(c) No sub-divisional titles would be issued for areas designated for amenity/utility or public purpose (public utility lands) within the development and these areas must be surrendered to the State Government;

(d) The approval was subject to the conditions specified in Annexures II and III to the State ExCo Paper dated 30 May 1990;

[12] The layout plan ("approved layout plan") for the development was subsequently approved by the Pejabat Daerah Dan Tanah Bera (in its capacity as the local planning authority for the district of Bera) on 28 July 1997.

[13] Besides showing the position of the 682 buildings lots, the approved layout plan also delineated the following ten areas as public utility lands within the development:

(i) 1 lot for tapak gerai;

(ii) 1 lot for tangki najis;

(iii) 1 lot for surau;

(iv) 3 lots for kawasan lapang;

(v) 2 lots for LLN sub-stations;

(vi) 1 lot for dewan orang ramai;

(vii) 1 lot for tadika.

[14] Despite the State ExCo's direction that no sub-divisional title would be issued for any public utility land within the development, the Pejabat Daerah dan Tanah Bera nevertheless proceeded to prepare a total of 692 sub-divisional titles, namely, 682 for the residential and shop-house lots and ten for the public utility lands.

[15] Nevertheless, in its letter dated 9 September 1997 to PTSB, the Pejabat Daerah Dan Tanah Bera had requested a sum of RM61,400 as processing fee only for the preparation and issuance of documents of titles for the 682 commercial/residential properties.

[16] PTSB duly paid the processing fee on 11 July 2002 and an official receipt was issued by the Pejabat Daerah dan Tanah Bera to PTSB.

[17] PTSB subsequently sold the said land to GK Land *vide* a sale and purchase agreement (SPA) dated 22 November 1999.

[18] *Vide* a joint-venture agreement dated 15 January 2001, GK Land appointed Eastern Global United Sdn Bhd ("EGUSB") as developer for the development.

[19] *Vide* a letter dated 16 January 2006 addressed to EGUSB the Jabatan Bekalan Air Daerah Bera requested that a "tanki air reserve" ("the reserved water tank") be constructed within the development area.

[20] Neither PTSB nor EGUSB responded to the said letter.

[21] EGUSB did not complete the development and by mutual consent the joint-venture agreement was terminated.

[22] *Vide* a new joint-venture agreement dated 14 April 2008 ("the JVA") GK Land appointed Mega 3 Housing as the new developer to complete the development. The development was then carried out to its completion by Mega 3 Housing.

[23] Pursuant to the requirement of the Jabatan Bekalan Air, and with the approval of the Pejabat Daerah dan Tanah Bera, Mega 3 Housing proceeded to construct the reserved water tank on a portion of the tapak gerai lot.

[24] After construction of the water tank, Mega 3 Housing proceeded to apply to the Pejabat Daerah dan Tanah Bera to amend the approved layout plan to reflect the position of the said reserved water tank on the said plan and it was approved on 25 February 2009.

[25] The construction of the water tank on the tapak gerai became the subject of a dispute between GK Land and Mega 3 Housing and subsequently the subject-matter of the two suits before the Kuala Lumpur High Court and the Temerloh High Court.

At The High Court

[26] The Kuala Lumpur suit was filed by GK Land against Mega 3 Housing for breach of the terms of the JVA.

[27] In its statement of claim, GK Land claims that by virtue of recital (5) read with the definition of "the said land" in cl. 2(d) of the JVA, GK Land was the beneficial owner of the tapak gerai and the said land was excluded from the development and would be separately developed by GK Land on its own.

[28] GK Land alleged that Mega 3 Housing had breached cl. 2(d) of the JVA when it proceeded to construct the reserved water tank on the tapak gerai contrary to the approved layout plan which did not envisage the construction of a water tank on the said tapak gerai and also cl. 2(g) of the JVA which provides that no amendment to the approved layout plan could be made without the consent of GK Land and the local authority.

[29] GK Land further averred that the construction of the water tank on the tapak gerai had seriously affected its commercial viability and GK Land suffered loss and damage as a result thereof.

[30] In the premises, GK Land claimed for special damages in the sum of RM1,382,990 representing the loss of the whole tapak gerai (calculated at 39,514 s.f. x RM35 per s.f) and general damages for loss of economic use of the tapak gerai to be assessed.

[31] In opposing the Kuala Lumpur Suit, Mega 3 Housing raised a number of defences in its defence, among which were, that the tapak gerai did not belong to GK Land but was land specified in the approved layout plan for the development as a public utility land and was supposed to be surrendered to the Pahang State Government as State land; that recital (5) of the JVA which purports to confer beneficial ownership of the tapak gerai to GK Land was ineffectual and unenforceable since the land in fact belongs to the State Government; that GK Land had no right whether legal or contractual to claim for any loss or damages which it purportedly suffered due to the construction of the reserved water tank on the tapak gerai which was a public utility land; that Mega 3 Housing was merely complying with its contractual

obligation under cl. 8 of the JVA which requires the Mega 3 Housing as the developer to conform with, *inter alia*, the requirements of any local or other authority in respect of the development; that Mega 3 Housing did not breach 2(g) of the JVA when it applied to amend the approved layout plan as such action was necessary to reflect the true position of the reserved water tank in compliance with the law relating to layout plan and the amendment to the approved layout plan was approved by the Pejabat Daerah Dan Tanah Bera (acting in its capacity as the local authority for the district of Bera) on 25 February 2009.

[32] The Pahang State Government subsequently applied to intervene in the Kuala Lumpur suit and was added as the second defendant. In its defence and counterclaim, the State Government, after narrating the history behind the development, disputed GK Land's assertion that the tapak gerai was land beneficially owned by GK Land. It was averred that the tapak gerai was in fact a public utility land and should have been surrendered to the Pahang State Government as part of the conditions of its approval for the development. The State Government then sought an order from the court to declare the tapak gerai as State land and a consequential order for PTSB or GK Land to surrender the issue document of title of the tapak gerai to the relevant land office for cancellation.

[33] Mega 3 Housing subsequently filed the Temerloh suit naming PTSB as the first defendant, GK Land as the second defendant, the Pahang State Government as the third defendant, Pengarah Tanah & Galian Negeri Pahang as the fourth defendant and the Pentadbir Tanah Daerah Bera as the fifth defendant.

[34] In its statement of claim, Mega 3 Housing seeks a similar relief from the court to declare the tapak gerai as State land and an order for PTSB/GKL to surrender the issue document title of the tapak gerai to the Pejabat Tanah Daerah Bera for cancellation.

[35] In its defence to the suit, GK Land disputed Mega 3 Housing's *locus standi* to seek the declaration and asserts that only the State Government has the *locus standi* to do so.

Decision Of The High Court

[36] At the conclusion of the trial, after hearing the parties and having considering their submissions, the learned Judicial Commissioner allowed GK Land's claim against Mega 3 Housing for breach of the JVA and granted nominal damages to GK Land to be assessed by the court. He also allowed the State Government's prayers for a declaration that the tapak gerai was State land and an order for PTSB/GKL to surrender the issue document of title of the said land for cancellation.

The learned Judicial Commissioner however dismissed the Temerloh suit on the issue of *locus standi*.

[37] Briefly, the decision of the High Court was premised on the following findings.

[38] In the Kuala Lumpur Suit, GK Land's claim against Mega 3 Housing was for breach of the JVA. Consequently, whether GK Land has any proprietary right over the tapak gerai lot is irrelevant in deciding whether Mega 3 Housing had breached the terms of the JVA.

[1] It is clear that Mega 3 Housing had breached clause 2(g) of the JVA when it constructed the Reserved Water Tank on the Tapak Gerai lot without the prior consent of GKL and in contravention of the Approved Layout Plan which did not include the construction of the Water Tank on the said Tapak Gerai lot. GKL was therefore entitled to damages against Mega 3 Housing as provided in section 74 of the Contracts Act;

[2] Nevertheless, since the Water Tank was for the benefit of the purchasers in the development and constructed on land which was meant for a public purpose and had to be surrendered to the State Government, GKL was therefore entitled to nominal damages only to be assessed by the Court

(see: *Popular Industires Limited v. Eastern Garment Manufacturing Sdn Bhd* [1989] 3 MLJ 360);

[3] In respect of the State Government's counterclaim against GK Land in the Kuala Lumpur Suit, it is clear from the oral and documentary evidence adduced by the parties before the Court that the Tapak Gerai lot was a public utility land and by virtue of the conditions of approval by the State Government that all areas in the development meant for a public utility purpose must be surrendered to the State Government as State land, the State Government was entitled to the declaration and order sought;

[4] In respect of the Temerloh Suit, since Mega 3 Housing has no proprietary or beneficial interest in the Tapak Gerai lot, it has no *locus standi* to come to Court to seek the remedy in the form of a declaration on the status of the Tapak Gerai in the Suit. (See *Government of Malaysia v. Lim Kit Siang* [1988] 2 MLJ 12);

[5] The rightful party to seek such a declaration was the State Government of Pahang which had already done so in the Kuala Lumpur suit. The Court has no power to grant two declarations of the same nature to two different parties in two different suits.

[39] In consequence of his decision, the learned trial judge made the following orders:

Tuntutan Plaintiff dalam Kes Temerloh terhadap Defendan (1) dan Defendan (2) seterusnya Defendan 3 hingga Defendan (5) di tolak dengan kos diaward kepada Defendant (1) dan (2) sebanyak RM57,000.00 serta tiada kos diaward kepada Defendan (3) hingga defendan (5).

Tuntutan balas Kerajaan Pahang dalam Kes Kuala Lumpur bagi satu deklarasi adalah dibenarkan dan diperintahkan bahawa:

(i) Tanah "Tapak Gerai" yang dipegang dibawah Suratan Hakmilik HS(D) 7290, PT 18785, Mukim Triang, Daerah Bera, Pahang diistiharkan sebagai milik Kerajaan Negeri Pahang;

(ii) GK Land Sdn. Bhd., diperintahkan supaya menyerahhak Suratan Hakmilik asal tanah "Tapak Gerai" tersebut dalam tempoh 14 hari untuk dibatalkan oleh Pentadbir Tanah Bera.

(iii) Kerajaan Negeri Pahang hendaklah membayar balik segala cukai tanah yang telah dibayar kepada Pembangunan Triang Sdn. Bhd., setelah hakmilik asal Suratan Hakmilik tanah "Tapak Gerai" diserahkan kepada Pentadbir Tanah Bera.

(iv) Diperintahkan selanjutnya bahawa GK Land Sdn Bhd berhak atas "nominal damages" dari Mega 3 Housing Sdn Bhd, yang akan ditentukan dihadapan Hakim kemudian.

The Appeals

[40] As stated earlier, both GK Land and Mega 3 Housing appealed against the decision of the Temerloh High Court.

Our Decision

[41] We heard the two appeals together on 26 January 2015 and after considering the oral and written submissions of learned counsel for all the parties and having perused the appeal records, we had dismissed the entire appeal of GK Land in Appeal No. 184. We had however allowed Mega 3 Housing's cross-appeal in Appeal 184 and its appeal in Appeal 185.

[42] GK Land has now applied to the Federal Court for leave to appeal against our decision. We now set out the reasons for our decision.

Issues For Determination

[43] Before us, learned counsel for the parties raised the following three issues for our determination:

(i) Was the learned Judicial Commissioner correct in holding that pursuant to the approvals of the State ExCo for the development of the master land the tapak gerai was a public utility land which had to be surrendered to the State as State land?;

(ii) Was the learned trial judge correct in holding that GK Land's claim in the Kuala Lumpur Suit was a contractual claim based on the JVA and the question whether GK Land had proprietary right over the tapak gerai was irrelevant in determining Mega 3 Housing's liability under the JVA?

(iii) Was the learned Judicial Commissioner correct in holding that Mega 3 Housing did not have the *locus standi* to seek the declaration regarding the status of the tapak gerai in the Temerloh suit?

The First Issue: Was The Learned Judicial Commissioner Correct In Holding That The Pursuant To The Approvals Of The State Exco For The Development Of The Master Land The Tapak Gerai Was A Public Utility Land Which Had To Be Surrendered To The State As State Land?

[44] To our minds, this issue raises two important questions for our consideration. The first question was whether the State Authority, in approving an application under s. 124A of the NLC, has the authority or power to specify that certain areas within the proposed development must be surrendered to the State as public utility areas. This question is important because of the legal and constitutional issue raised by GK Land that the orders of the High Court declaring the tapak gerai as State land and for its issue document of title to be surrendered to the State Government was *ultra vires* the procedure in s. 200 of the NLC relating to the surrender of land and art. 13(1) of the Federal Constitution which prohibits the deprivation of private property by the Government save in accordance with the law.

[45] The second question is more a question of fact, ie, was the tapak gerai indeed specified as a public utility land in accordance with the terms of the State ExCo's two decisions dated 30 May 1990 (*via* exh. P12) and 13 April 1994 (*via* exh. P16).

[46] In this regard, the learned Judicial Commissioner in his grounds of judgment, specifically at paras [23] to [36], had answered both the questions in the affirmative.

[47] In respect of the first question, the learned Judicial Commissioner had relied on s. 124A(3) read with s. 124(5)(c) of the NLC which reads as follows:

Section 124(A)

(3) *The approval of the application for sub-division and the approval of the application under sub-section (1) of section 124 in respect of the proposed sub-divisional portions shall both be conditional upon the applicant satisfying in respect of all the sub-divisional portions, within such period as the State Authority may specify, all the conditions that may be imposed under sub-section (5) of section 124 in respect of each of the proposed sub-divisional portions.*

Section 124(5)

(5) **Any direction given by the State Authority under this section may be made conditional upon all or any of the following matters:**

(a) the payment of a further premium;

(aa) the payment of any other charges as may be prescribed;

A (b) the reservation of a new rent;

(c) compliance with such other requirements as the State Authority may think fit.

(emphasis added by us).

B **[48]** The learned Judicial Commissioner was of the view that s. 124A(3) read with s. 124(5)(c) was the empowering provision which gave the State Authority, when approving the sub-division of any private land for development purposes, to impose conditions relating to the reservation of certain areas within the development to be used for certain public amenity/ C utility purposes and for such areas to be surrendered to the State for such purposes.

[49] In regard to the second question, the learned Judicial Commissioner had relied in the main on, (1) the decision of the Jawatankuasa Pembangunan Tanah dan Kewangan Negeri Pahang dated 16 March 1990 (exh. P11), which D when approving in principle the proposed development, had cited "kawasan perniagaan kedai (gerai)" as an example of a public utility land (kemudahan awam) which must be sited in the development; (2) the two decisions of the State ExCo *vide* exhs. 12 and 16 which had mandated that all "tapak bangunan awam hendaklah diserahkan kepada Kerajaan dan tidak akan E dikeluarkan hakmilik" and the types of kemudahan awam were stated as "kawasan lapang, tangki najis dan surau dan lain-lain tapak awam". The learned Judicial Commissioner was of the view that by virtue of the words "lain-lain tapak awam" used in the said decisions, the list of "kemudahan awam" or public utility land was not exhaustive. In this regard, the learned Judicial Commissioner had accepted the evidence SP3, Dato Nazri b. Abu F Bakar, the then Deputy Director of State Land and Mines Department and SP1, Syed Ahmad Khairul Anwar al-Yahya bin Sheikh Abdul Rahman, the then Secretary to the State Exco Meeting, who had explained to the court that the conditions imposed by the State ExCo can be general or specific in nature. According to them, if the conditions are general, it would mean that G the State ExCo left it to the relevant State agencies/departments to make the specifications. In this case, the State Exco had imposed a general condition regarding "lain-lain tapak awam" which meant that it had left the task of specifying these lands to the Pejabat Daerah Dan Tanah (acting in its capacity as the local authority for the District of Bera), after consulting the relevant H state agencies or departments. In so doing, the local authority would be guided by the decision made by Jawatankuasa Pembangunan Tanah dan Kewangan Negeri Pahang referred to earlier. In this case, the Jawatankuasa Pembangunan Tanah dan Kewangan Negeri Pahang in its approval in principle dated 16 March 1990 in respect of this development (exh. P11) had I cited "kawasan perniagaan kedai (gerai)" as an example of a public utility land to be sited within the development; and (3) the layout plan approved by the local authority had designated ten areas within the development as public utility lands, one of which was the tapak gerai.

[50] Having given due consideration to the grounds of judgment of the learned Judicial Commissioner, the submissions of the parties and having perused the appeal records, we find no reason to disturb the conclusion reached by the learned Judicial Commissioner with regard to the status of the tapak gerai, *albeit* based on slightly differently grounds from the grounds proffered by him.

[51] On this issue, having regard to the law relating to planning approval which must be obtained by a registered proprietor before undertaking any commercial development of his land, and it is common knowledge that the law relating to any planning approval is the Town and Country Planning Act 1976 (the Act), it is our view that the process or mechanism by which the State Authority came to designate any land within any proposed development as a public utility land is to be found in the Act rather than under s. 124A(3) read with s. 124(5) of the NLC as opined by the learned Judicial Commissioner.

[52] As stated earlier, the Town and Country Planning Act is an Act which regulates, *inter alia*, any planning permission for development of any private land, the authority by whom such permission is to be obtained and the conditions which can be imposed by the relevant approving authority in approving such development.

[53] For the purpose of these appeals, the relevant sections in the Act governing the proposed development of the master land would be ss. 4, 19, 21, 21A, 21B and 22.

[54] Section 4 of the Act established a statutory body known as the State Planning Committee (the Committee) whose membership consists, *inter alia*, of the Menteri Besar as the Chairman, the State Secretary, the Director of Land and Mines, the State Director of Public Works and the State Director of Environment. As can be seen this is a high powered statutory body where the chairman is none other than the Menteri Besar of the State who, in the discharge of his functions, is assisted by the heads of the relevant State departments responsible for the administration of lands, public works and environment within the State.

[55] Under s. 4(4) then in force, the functions of the Committee include, to promote within the State, within the framework of the National Policy, the conservation, use and development of all lands in the State.

[56] Section 4(5) provides that the Committee may from time to time give any local planning authority directions not inconsistent with the provisions of the Act, and the local planning authority shall give effect to such directions.

[57] Section 19 in turn provides that no person shall undertake any development of any land or building unless he has applied for a planning permission under the Act.

[58] Section 21(1) states that an application for planning permission in respect of a development shall be made to the local planning authority and shall be in such form and shall contain such particulars and be accompanied by such documents, plans, and fees as may be prescribed.

[59] Section 2 defines a local planning authority as "the local authority for the area in which the land or building is situated". Thus, in respect of the development in this case, the Pejabat Daerah dan Tanah Bera in its capacity as the local authority for the district of Bera was the local planning authority for the purpose of planning permission in respect of the development in the area.

[60] Under s. 6, the functions of a local planning authority shall be, *inter alia*, (a) to regulate, control, and plan the development and use of all lands and buildings within its area.

[61] Section 21A(1) provides that in addition to the documents and plans required to be submitted under sub-s. 21(1) for planning permission, the applicant shall submit a development proposal report which shall contain, *inter alia*, layout plans, the details of which are specified in s. 21B.

[62] Section 21B(1) in turn provides that the layout plans shall show the proposed development and, in particular under para. (vi), "the making up of open spaces". Section 2 of the Act defines an "open space" to mean "any land whether enclosed or not which is laid out or reserved for laying out wholly or partly as a public garden, park, sports and recreation ground, pleasure ground, walk or as a public place".

[63] Applying the provisions of the Act to the facts of this case, it could be surmised that the Jawatankuasa Pembangunan Tanah dan Kewangan, despite its name, was not a mere administrative body, but the State Planning Committee as envisaged in s. 4(1) of the Act.

[64] As stated earlier, the State Jawatankuasa Pembangunan Tanah dan Kewangan in its capacity as the State Planning Committee in its decision dated dated 7 February 1990 in approving the development project in principle (exh. P11) had given the following direction to the local planning authority:

> Oleh sebab keluasan tanah ini melebihi 20 ekar disyaratkan supaya diadakan kemudahan awam seperti padang permainan, tapak dewan orang ramai, kawasan perniagaan kecil (gerai), tapak surau dan lain-lain mengikut keperluan yang ditentukan oleh Pihak Berkuasa Tempatan dan masa ke semasa.

[65] It could also be safely surmised that this direction of the State Jawatankuasa Pembangunan Tanah dan Kewangan was given pursuant to s. 4(4) of the Act in the exercise of its statutory function.

[66] It is clear that in the light of the functions of the State Planning Committee as provided in s. 4(4) and the meaning given to the words "open space" in s. 2 of the Act, which includes "land, whether enclosed or not … reserved as a public place", the inclusion of "kawasan perniagaan kecil (gerai)" as an example of land to be used for a public purpose by the Jawatankuasa Pembangunan Tanah dan Kewangan sits in with the meaning of "open space" in s. 2.

[67] By virtue of s. 4(5) of the Act, the Pejabat Daerah dan Tanah as the local planning authority responsible for the approval of this development would have been required to comply with the direction of the Jawatankuasa Pembangunan Tanah dan Kewangan.

[68] This would account for the fact that the Pejabat Daerah dan Tanah Bera (in its capacity as local planning authority) had pursuant to the direction of the Jawatankuasa Pembangunan Tanah dan Kewangan specified ten areas, one of which was the tapak gerai, within the development as lands to be used for a public amenity/utility or for a public purpose on the final approved layout plan.

[69] Further, it is clear from ss. 21A and 21B of the Act that it was the registered proprietor who has to prepare all the plans, including the layout plan, for the purpose of obtaining planning approvals. In this case, the evidence showed that the proposed layout plan submitted by PTSB through its consulting engineers had already incorporated the ten specified public utility lands and the said layout plan was finally approved by the Pejabat Daerah dan Tanah Bera on 28 July 1997. SP1, Mr Ong Teong Pun, the sole witness for GKL during the trial, admitted during cross-examination that PTSB had accepted the approved layout pan without any protest.

[70] Our conclusion that the process or mechanism of specifying any area within any proposed development as a public utility land is to be carried out under the various provisions of the Act enumerated above is further supported by s. 136 read with s. 124A of the NLC.

[71] For ease of reference, we set out below s. 124A and s. 136 which read as follows:

> Section 124A
>
> (1) The proprietor of any alienated land may apply to the State Authority for the approval of the sub-division of the land and at the same time make an application under sub-section (1) of section 124 in respect of the proposed sub-divisional portions.

(2) Any application under sub-section (1) of section 124 in respect of the proposed sub-divisional portions shall be in Form 7D, and shall be treated and dealt with under section 124 as a separate application under sub-section (1) of section 124 in respect of each of the proposed sub-divisional portions.

(3) The approval of the application for sub-division and the approval of the application under sub-section (1) of section 124 in respect of the proposed sub-divisional portions shall both be conditional upon the applicant satisfying in respect of all the sub-divisional portions, within such period as the State Authority may specify, all the conditions that may be imposed under sub-section (5) of section 124 in respect of each of the proposed sub-divisional portions.

(4) For the purpose of the application for sub-division under sub-section (1), the application shall be treated as it is an application under section 135 and the provisions of sections 136, 137, 138 and 139 shall apply insofar as they are not inconsistent with the provisions of this section, and in considering such application the State Authority shall have and may exercise all the powers of the State Director or the Land Administrator, as the case may be, or may direct the State Director or the Land Administrator, as the case may be, to exercise all or any of them.

Section 136

(1) No sub-division shall be approved by the State Director or, as the case may be, Land Administrator unless the following conditions are satisfied:

...

(c) without prejudice to the generality of paragraph (b):

(i) that any necessary approval of any planning authority has been obtained, and

(ii) that the sub-division would not be contrary to any plan approved by the State Authority for the development of the area in which the land is situated, or to any decision of any planning authority for that area, and

(iii) if the case falls within any direction in that behalf given by the State Authority, that the sub-division has the consent of any body or authority specified in, or appointed by, the direction;

(emphasis added)

[72] It is clear to us that the term "planning authority" mentioned in s. 136(1)(c)(i) and (ii) must refer to the planning authority as defined in the Act. In other words, sub-division of the master land under the special procedure provided in s. 124A of the NLC would only be considered after all the necessary planning approvals under the Act have been obtained. Under the Act, planning approvals would include the submission of layout plan which by virtue of s. 21B must mark out areas for open spaces.

[73] Indeed, our conclusion that the task of designating any land within any proposed development to be a public utility land is with the planning authority upon the direction of the State Planning Committee is supported by the subsequent amendment to s. 136(1) of the NLC *vide* A.A. 1332/08) which added a new para. (ca) to read as follows:

> (ca) that the proprietor has agreed in his application that as a consequence of the subdivision, the land described therein which has been approved by any planning authority or body or authority specified in paragraph (c) to be used for public purpose be surrendered for such purpose in accordance with section 197;

[74] Having regard to the process or mechanism relating to the designation of any public utility within any proposed development as provided in the Town and Country Planning Act 1976 and ss. 124A and 136 of the NLC as discussed above, it is clear that all the submissions on behalf of GK Land about the State ExCo having not imposed any specific condition in its two approvals under s. 124A read with s. 124(5) and that the initial approvals of the Jawatankuasa Pembangunan and Kewangan relating to public utility lands which include the tapak gerai was superseded by the two approvals were misconceived and did not hold water.

[75] Based on the foregoing discussions and analysis, we would therefore answer both the questions in relation to this issue in the affirmative.

[76] Before we leave this judgment, and for completeness, we would like to address the other issues raised by learned counsel for GK Land in relation to this issue.

[77] One of the issues raised was that the document of title issued in respect of the tapak gerai did not impose any condition that it was to be surrendered to the State Government as State land. In this case, the tapak gerai lot was held under a title known as HS(D) 7290, PT 18785 in the name of PTSB as registered proprietor and the only condition endorsed on the title was that "Tanah ini hendaklah digunakan untuk Bangunan Perniagaan (Gerai Sahaja)" and the annual quit rent for the tapak gerai lot was set at RM407.

[78] This showed that the State Government had all along intended that PTSB shall own the tapak gerai as the indefeasible registered proprietor subject only to the express condition endorsed on the title on its use.

[79] Another issue raised was that PTSB had paid the quit rent for the tapak gerai and receipts of such payment had been issued by the said land office (see exhs. D27-D30). The acceptance of quit rent was an acknowledgement by the State Government of PTSB's ownership of the tapak gerai. The State Government was estopped from saying that the acceptance of quit rent was a mistake on the part of the land office.

[80] Finally, it was submitted that the State Government had acted *ultra vires* and contrary to s. 200 of the NLC as well as art. 13(1) of the Federal Constitution when it unilaterally sought a declaratory order from the High Court to force PTSB/GK Land to surrender the issue document of title for the tapak gerai to the State Government without the consent of PTSB.

[81] Section 200 of the NLC clearly requires the surrender of any private land to be with the consent of both the registered proprietor and the State Authority. In the case of *Pengarah Tanah dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn. Bhd.* [1978] 1 LNS 143; [1979] 1 MLJ 135, the Federal Court held that surrender of title to any alienated land may only be made with the consent of the registered proprietor and the approval of the State Authority and there is no power under the NLC to compel a registered proprietor to surrender the title to his land except by means of forfeiture for non-payment of quit rent or breach of any condition.

[82] Consequently, the learned trial judge erred in law and in fact when he made a declaration that the tapak gerai belongs to the State Government and further ordered the issue document of title to said land be surrendered for cancellation; and such orders ought to be set aside as null and void and unenforceable as they contravened s. 200 of the NLC and art. 13(1) of the Federal Constitution which prohibits forfeiture or deprivation of PTSB/GK Land's property save in accordance with law.

[83] We were unable to accede to any of the submissions raised by learned counsel in respect of the aforementioned issues, for the following reasons.

[84] On GK Land's contention that PTSB had an indefeasible proprietorship over the tapak gerai by virtue of the title which was issued in its name without any condition for its surrender, we found no merits in this argument.

[85] As rightly pointed out by learned counsel for the respondents, pursuant to the State ExCo's two approvals made pursuant to s. 124A, only 682 units of residential and shop-houses were approved for the development by PTSB. PTSB was fully aware that upon sub-division of the master land, it was only entitled to the 682 sub-divisional lots and all other public utility lands designated on the approved layout plan had to be surrendered to the State Government as State land to be used for such purposes.

[86] With regard to the issuance of titles for the ten public utility lands, as was explained by SP1 (Dato' Nazri b Abu Bakar) in his testimony during the trial, it was a mistake made by the Jabatan Daerah Dan Tanah Bera contrary to the direction of the State Exco in its approvals to the development. However, PTSB was fully aware of the mistake made by the land office but chose to keep quiet about it. PTSB should not be allowed to profit from it.

[87] In this regard we found support in the case of *Lee Chi Min & Anor v. Superintendent of Land and Survey Department, Kuching* [1980] 1 LNS 196 (FC) (cited by the respondents) in which Mohd Suffian LP (as he then was) had made the following observation:

> Here permission to subdivide was given on condition that the two lots should be surrendered to Government without any charge for use as open space. This condition was agreed to by the appellant. Government need not have issued title in regard to these two lots, or having issued them it should have registered them in their own name as owners. Instead they issued them, and in the name of the appellants without mention of the special conditions and then handed them over to the appellants. The appellants must have rubbed their eyes in disbelief when the documents of title landed on their laps. The appellants knew all this was a mistake, yet kept quiet. I do not think they should be allowed to profit from the Government's mistake.

[88] In regard to PTSB's contention that acceptance of quit rent by the land office amounted to a waiver and operates as an estoppel against the State Government from claiming the tapak gerai, we agreed with learned counsel for the respondents and learned Judicial Commissioner that this argument was devoid of merit.

[89] We agreed that judicial notice could be taken that acceptance of quit rent at the payment counter at the land office is automatic and the counter clerk who accepts the payment is not required to inquire into the validity or otherwise of the title before accepting such payment. Such an administrative act of a counter clerk in collecting revenue for the State where the title as shown on the computerised system is for all intents and purposes still in existence and valid on the face of it could not bind the State. If it were otherwise, a person who had obtained title to a piece of land by mistake or fraudulent means could set up the defence that the State or the previous land owner is estopped from claiming back the land due to the acceptance of quit rent by the land office.

[90] In regard to GK Land's argument that the action of the State Government in seeking the declaratory orders from the High Court was an action *ultra vires* s. 200 of the NLC and art. 13(1) of the Federal Constitution, again we were unable to agree with this contention.

[91] It could not be disputed that in this case the final approved layout plan in respect of the development had designated ten areas for use as public amenities or as public places, which included the tapak gerai. GKL's sole witness, SD1, Mr Ong Teong Pun had admitted during cross examination that PTSB had accepted all the terms of the State ExCo's approvals on the development, including the approved layout plan.

[92] Further, PTSB was fully aware that based on the terms of the two approvals of the State ExCo, public utility lands designated on the approved layout plan had to be surrendered to the State for such purposes, in accordance with the procedure set out in the NLC for surrender of land.

[93] This was evidenced by the conduct of PTSB in surrendering two lots earmarked for LLN sub-stations directly to TNB and the other seven lots to the Jabatan Daerah dan Tanah Bera. PTSB should not be allowed to blow and cold or, as commonly said, approbate or reprobate on this matter.

[94] Taking into account the legal status of the tapak gerai as discussed above and the circumstances of this case in which PTSB/GK Land had refused to surrender the issue document of title of the said land despite repeated requests from the State Government through the Pejabat Daerah Dan Tanah *vide* its letters dated 28 October 2009 (exh. P23) and 17 May 2010 (exh. P20), we were of the view that the procedure adopted by the State Government in seeking the relief of declaration and order for PTSB/GKL (which was in possession of the issue documents of title) to surrender such document was a valid action; and the High Court has the jurisdiction to grant an order to compel obedience to a decision of the State Government made in accordance with the lawful exercise of its powers under the relevant laws.

[95] We find support in our conclusion in the case of *Hoe Lee Development Sdn Bhd v. Shell Malaysia Trading* [1984] 1 LNS 115; [1985] 1 MLJ 267 (cited to us by the respondents) in which Dzaiddin J (as he then was) allowed the plaintiff's application by ordering the defendant (Shell Malaysia Trading) to surrender Lot No. 1036 (formerly Lot 919) Section 4, Bandar Butterworth (which was previously required by the State Authority to be surrendered upon an application by Shell Malaysia Trading for sub-division of its land), to the Government of Penang and the Registrar of Land Titles, Penang was to register and give effect to the court's order.

[96] For the reasons stated above, we dismissed GK Land's appeal in Appeal No. 184 with costs and affirmed the decision of the High Court.

Second Issue: Was The Learned Trial Judge Correct In Holding That GK Land's Claim In The Kuala Lumpur Suit Was A Contractual Claim Based On The JVA And The Question Whether GK Land Had Any Proprietary Right Over The Tapak Gerai Was Irrelevant In Determining Mega 3 Housing's Liability Under The JVA?

[97] The High Court in allowing GK Land's claim against Mega 3 Housing for breach of the JVA had made the following findings:

> [37] Defendan (2) di dalam tindakan terhadap Plaintif dalam Kes Kuala Lumpur telah membuat tuntutan terhadap Plaintif bagi satu pampasan atas kemungkiran Plaintif terhadap perjanjian usahasama. Perjanjian usahasama antara Plaintif dan Defendan (1) dan Defendan (2) ialah bagi Plaintif membangunkan Tanah Tersebut. Perjanjian usahasama di klausa (5) menyatakan tanah "Tapak Gerai" yang ditunjukkan dalam plan susunatur tidak menjadi

sebahagian daripada kawasan yang dimajukan dan menurut klausa 2(g) bahawa plan susunatur adalah termasuk apa-apa pindaan plan yang diluluskan oleh Defendan (2) dan Pihak Berkuasa yang berkaitan. Menurut Plaintif, sebelum membina Tangki Air atas tanah "Tapak Gerai" tersebut beliau melalui surat bertarikh 12/6/2008 kepada Defendan (1) mencadangkan supaya Tangki Air dibina atas tanah "Tapak Gerai" tersebut. Menurut Defendan (2) bagi pihak Defendan (1), beliau tidak pernah menerima surat tersebut dan tidak pernah memberi apa-apa persetujuan dan kelulusan atas cadangan dan pembinaan Tangki Air di atas tanah "Tapak Gerai" itu. Dengan itu pembinaan Tangki Air oleh Plaintif di atas tanah "Tapak Gerai" itu tanpa kelulusan Defendan (2) telah berlaku satu kemungkiran perjanjian usahasama oleh Plaintif. Walaupun tanah "Tapak Gerai" itu adalah tanah yang patut diserah balik kepada Kerajàan Negeri, tetapi Plaintif tetap telah mungkir perjanjian usahasama kerana isu kemungkiran perjanjian berbeza dengan isu tanah "Tapak Gerai" sebagai kawasan kegunaan awam. Oleh itu Defendan (2) berhak pada satu gantirugi atau pampasan [seksyen 74 Akta Kontrak dan kes *Hamdan Johan & Ors. v. Felcra Bhd & Ors and Another Case* [2010] 3 CLJ 474 dirujuk].

[98] The learned Judicial Commissioner however allowed only nominal damages to GK Land based on the following ground:

Walau bagaimanapun pembinaan Tangki Air itu dibuat bagi tujuan kegunaan penduduk dan bagi menjayakan pembangunan atas Tanah Tersebut. Pembinaan Tangki Air atas tapak yang patut diserahkan dan menjadi hakmilik Kerajaan Negeri itu tidaklah mendatangkan apa-apa kerugian kepada Defendan (1) dan Defendan (2). Dengan itu, satu pampasan yang nominal (nominal damages) patut diawardkan kepada Defendan (1) dan Defendan (2) dalam Kes Kuala Lumpur. (*Popular Industries Limited v. Eastern Garment Manufacturing Sdn. Bhd.* [1989] 3 MLJ 360 dirujuk).

[99] We are again unable to agree with the learned Judicial Commissioner's findings on this issue, based on the following grounds.

[100] It is clear to us, based on its pleadings in the Kuala Lumpur Suit, that the whole basis of GK Land's claim against Mega 3 Housing for breach of the JVA was grounded on the fact that pursuant to preamble (5) read with cl. 2(d) of the JVA, parties had expressly agreed that GK Land was the beneficial owner of the tapak gerai (having acquired it under the SPA entered into between PTSB and GK Land) and the said tapak gerai was expressly agreed to be excluded from the development to be undertaken by Mega 3 Housing; that Mega 3 Housing breached cl. 2(d) when it purported to construct the reserve water tank on the tapak gerai when the approved layout plan did not envisage the siting of any water tank on the said land; and that Mega 3 Housing had further breached cl. 2(g) of the JVA when it amended the approved layout plan without the consent of GK Land.

[101] As we had narrated earlier under the background facts, Mega 3 Housing opposed the Kuala Lumpur suit and in its defence took the stand, *inter alia*, that the tapak gerai did not belong to GK Land but was a public utility land pursuant to the State Government's approval for the development; that recital (5) of the JVA which purports to confer beneficial ownership of the tapak gerai to GK Land was unenforceable since the land in fact belonged to the State Government; that cl. 2(d) which purported to give GK Land a right to GK Land to commercially develop the tapak Gerai was misconceived since the tapak gerai belonged to the State Government and not GK Land; that the GK Land had no right, whether legal or contractual, to claim for any loss or damages it had purportedly suffered (which was denied) caused by the presence of the reserved water tank on the tapak gerai which was a public utility land; that Mega 3 Housing was merely complying with its contractual obligation under cl. 8 of the JVA which requires it as the developer to conform with, *inter alia*, the requirements of any local or other authority in respect of the development; and that Mega 3 Housing did not breach 2(g) of the JVA when it applied to amend the approved layout plan as such action was necessary to reflect the true position of the reserved water tank on the approved layout plan in compliance with the law relating to layout plan, and the amendment to the approved layout plan was indeed approved by the Pejabat Tanah Daerah Bera (in its capacity as the local planning authority for the district of Bera) on 25 February 2009.

[102] It is thus cystal clear, based on the respective pleadings of the parties that GK Land's claim in the Kuala Lumpur suit would stand or fall depending on whether GK Land was in fact and in law the beneficial owner of the tapak gerai.

[103] We had earlier made a determination, under the discussion relating to the first issue, that the tapak gerai was in fact and in law a public utility land and had to be surrendered to the State for such purpose.

[104] With regard to preamble (5) the evidence before the court showed that on the date of the SPA for the purchase of the master land by GK Land from PTSB, all the approvals for the development had already been finalised. This would mean that GK Land bought the master land subject to the terms of the approvals and were bound by them.

[105] Consequently, we agreed with Mega 3 Housing that preamble (5) of the JVA which declared GK Land as the beneficial owner of Tapak Gerai and cl. 2(d) which allegedly conferred exclusive right to GK land to commercially develop the tapak gerai were ineffectual to confer such a right on GK Land.

[106] We further agreed that since the GK Land had no proprietary, legal or beneficial, interest in the tapak gerai, it could not claim to have suffered any loss/damage by reason of the amendment to the approved layout plan and/or the construction of the reserved water tank on the said land.

[107] We also agreed with Mega 3 Housing that in view of cl. 8 of the JVA, Mega 3 Housing could not be said to have breached the JVA as the construction of the reserved water tank was clearly at the direction of Jabatan Bekalan Air which Mega 3 Housing as the developer was legally and contractually obliged to comply.

[108] For the reasons stated above, appellate intervention was required for us to set aside the findings and conclusions of the learned Judicial Commissioner on this issue.

Third Issue: Was The Learned Judicial Commissioner Correct In Holding That Mega 3 Housing Had No Locus Standi To Seek The Reliefs In The Temerloh Suit That The Tapak Gerai Was State Land And It Had To Be Surrendered To The State Government As State Land?

[109] The *locus standi* issue was raised by GK Land in its defence to the Termeloh suit in which it was averred that since Mega 3 Housing had in its statement of claim acknowledged that the Tapak Gerai belonged to the Pahang State Government and Mega 3 Housing had no beneficial or legal interest in the land, therefore Mega 3 Housing had no *locus standi* to seek the declaration on the status of the tapak gerai and Mega 3 Housing was a mere busy body when it filed the Temerloh suit.

[110] GK Land's contention found favour with the learned Judicial Commissioner.

[111] In dismissing the Temerloh Suit on the issue of *locus standi*, the learned Judicial Commissioner held that Mega 3 Housing had no special interest in the status of the tapak gerai and was fighting the cause of the State Government, as evidenced by his statement that "Kepentingan mengenai tanah "tapak gerai" itu secara tulennya adalah antara pihak defendan (3) dengan defendan (1) dan (2) yang secara langsungnya menyentuh hak yang perlu dilindungi oleh pihak-pihak. Pihak plaintif bukanlah pihak yang mempunyai hak yang perlu dilindungi dalam menentu putuskan tapak tanah "tapak gerai" tersebut yang sekaligus tidak mempunyai kepentingan atasnya".

[112] In this connection, the learned Judicial Commissioner had relied on the principle laid down in the Federal Court in *Government of Malaysia v. Lim Kit Siang & Another Case* [1988] 1 CLJ 219; [1988] 1 CLJ (Rep) 63; [1988] 2 MLJ 12 that "a plaintiff should have a special interest in the proceedings which he institutes in order to have *locus standi* to take up any action".

[113] We were inclined to agree with the submission of learned counsel for Mega 3 Housing that the learned Judicial Commissioner erred in approaching the matter as a *locus* or jurisdictional issue.

[114] To our minds, the issue here is not whether Mega 3 Housing had *locus standi* to initiate the Temerloh suit but whether it had a cause of action against the defendants in the said suit.

[115] It was patently clear to us that in the Temerloh Suit Mega 3 Housing was not pursuing a public interest litigation or a public law remedy. Neither was it seeking to vindicate or protect the interest of the State Government.

[116] On the contrary, Mega 3 Housing was fighting its own cause in the light of the claim by GK Land against it in the Kuala Lumpur suit where the actual legal status of the tapak gerai had a direct bearing on its liability to GK Land. It thus had a real and genuine interest in having the status of the tapak gerai determined by the court and consequently a cause of action against the defendants in the Temerloh Suit.

[117] Therefore, in filing the Temerloh suit for the court to determine the status of the tapak gerai and to compel the PTSB/GK Land to deliver up the issue document of title for the tapak gerai for cancellation, Mega 3 Housing was not a busy body but has a legitimate interest in the relief applied for.

[118] The learned trial judge in his judgment had observed that Mega 3 Housing's Temerloh suit was a duplicity because the Pahang State Government had already intervened in the Kuala Lumpur suit to seek a similar declaration. In this connection, Mega 3 Housing had explained that when it initiated the Temerloh suit the State Government had yet to intervene in the Kuala Lumpur suit while PTSB (under whose name the document of title of the tapak gerai was registered) was not made a party to the Suit by GK Land. It would thus be futile for Mega 3 Housing to seek such a declaration in the absence of PTSB and the State Government. It was thus forced to file the action in the Temerloh High Court. The court was informed that the State Government, which initially declined to be added as a co-plaintiff in the Temerloh suit, had subsequently supported Mega 3 Housing's action in the Temerloh suit.

[119] On the learned Judicial Commissioner's comment that the court had no power to grant the same declaratory order to two different parties in two different suits, our view is that since the Kuala Lumpur Suit and the Temerloh Suit were heard together, it would have sufficed for the High Court to have made one declaratory order in regard to the status of the tapak gerai and such a declaratory order would have served the purpose of Mega 3 Housing in filing the Temerloh Suit and the question of duplicity would not have arisen.

[120] For the reasons stated above, we find that appellate intervention was required for us to reverse the learned Judicial Commissioner's finding on this issue.

Orders And Costs

[121] In the light of our above findings and conclusions, we made the following orders:

(a) GK Land's appeal in Appeal No. 184 was dismissed with costs and the decision of the High Court was affirmed.

(b) Mega 3 Housing's cross-appeal in Appeal No. 184 was allowed with costs and the decision of the High Court awarding damages to GK Land to be assessed by the court was set aside.

(c) Mega 3 Housing's appeal in Appeal No. 185 was allowed with costs and the order of the High Court was set aside.

(d) After hearing parties, we fixed costs at RM10,000 in favour of Mega 3 Housing and at RM5,000 in favour of the Pahang State Government in respect of each appeal. We further ordered deposits to be refunded.